

EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

 ORIGINAL

GAN H. ENG, TAN F. LAM,)
KWOK C. TANG, JUN Q. CHAN,)
KAM C. HO, XIAO Z. ZHANG,) 07 Civ 3909
YAT C. CHAN, MING HO, RONG J.)
CHEN, JIAN Z. LUO, LE Y. CHEN,)
JIAN B. YAN, SU C. JIANG,)
XIU H. JIANG, XIU LIN, TAK S.)
CHENG, SHU C. HUANG, MEI J.)
HUANG and OY K. KWAN,)

Plaintiffs,)

vs.)

THE NICE RESTAURANT, INC.,)
BEN H. TOM, MEE MEE TOM a.k.a.)
MEE MEE M. THOM a.k.a. MEE MEE)
MEI, YAN SHING CHAN, CHEUNG)
YONG, SHING SI SUN, SHEN PING)
CHU, JOHN TAM, SI KIT WU,)
SI HUNG WU, CHUI BAI TAM, and)
JIMMY MOY a.k.a. JIMMY MUI)
a.k.a. JIMMY MEI,)

Defendants.)

DEPOSITION OF WILLIAM TAM
New York, New York
Tuesday, February 26, 2008

Reported by:
KRISTIN KOCH, RPR, RMR, CRR, CLR
JOB NO. 15170

1 W. Tam

2 A. I was born in Hong Kong.

3 Q. How old are you, sir?

4 A. 59.

5 Q. This is a question you are allowed
6 to lie to, but I accept that as the truth,
7 although you look younger.

8 A. Thank you.

9 Q. And when did you come to this
10 country?

11 A. 1968.

12 Q. I am going to ask you some questions
13 about your educational background.

14 A. Sure.

15 Q. Did you attend school in Hong Kong
16 or China before coming to the United States?

17 A. I attend high school in Hong Kong.

18 Q. When you came to the United States,
19 what schools did you attend here?

20 A. I went to Whener College for the
21 first year, and then I transferred to Pace
22 University and I get my BBA over there.

23 Q. What is your BBA in?

24 A. Accountant.

25 Q. Did you get any further education in

1 W. Tam

2 this country?

3 A. I went to NYU.

4 Q. And did you get a master's?

5 A. That's correct.

6 Q. In accounting as well?

7 A. No. Finance.

8 Q. Did you get any other degrees after
9 your master's?

10 A. No. That's it.

11 Q. I understand that you are a CPA; is
12 that correct?

13 A. That's correct.

14 Q. And you are licensed in New York as
15 a CPA; is that correct?

16 A. That's correct.

17 Q. Do you recall what year it was that
18 you obtained your CPA license, approximately?

19 A. Approximately '79. One year before
20 or after. All right?

21 Q. That's fine.

22 A. Okay.

23 Q. Between the time that you came to
24 this country in 1968 and 1979, were you
25 employed at any time?

1 W. Tam

2 A. Yes.

3 Q. Can you tell me where you were
4 employed after you came here in 1968? What was
5 your first job after you arrived?

6 A. I worked as a dishwasher in
7 Chinatown.

8 Q. How long --

9 A. Throughout my college -- that four
10 years in college.

11 Q. In what restaurant did you work?

12 A. It's called Won Kee.

13 Q. Do you know how to spell that?

14 A. W-O-N, K-E-E.

15 Q. And what were your hours of
16 employment at Won Kee?

17 A. I worked there on Saturday and
18 Sunday.

19 Q. And after you graduated college,
20 were you employed at any other jobs before
21 1979?

22 A. Yes. I worked in the accounting
23 firm.

24 Q. In which firm was this?

25 A. Called Frederick B. Wiepert.

1 W. Tam

2 A. I was engaged as the firm, as a CPA
3 firm, and I was also a shareholder.

4 Q. Do you remember when it opened, what
5 year that was?

6 A. Is that over there? Is that the tax
7 return?

8 Q. We have a certificate of
9 incorporation from I think it's October '84.
10 Does that refresh your recollection?

11 A. I don't know. It's too long for me
12 to remember.

13 Q. Was the restaurant open before you
14 had a retainer with them or --

15 A. Right in the beginning I have a
16 retainer with them.

17 Q. What role, if any, did you have in
18 the opening of the restaurant, setting it up?

19 A. Nothing.

20 Q. You were a shareholder, is that
21 correct, at the opening?

22 A. That's correct.

23 Q. And did you purchase your shares?

24 A. That's right.

25 Q. And how many shares did you own?

1 W. Tam

2 A. Five.

3 Q. Do you recall what the purchase
4 price was for those shares?

5 A. 50,000.

6 Q. Was this an investment that you made
7 in anticipation of making money?

8 MR. McHUGH: Objection to the form.

9 I will permit the witness to answer.

10 A. Do you still want me to answer the
11 question?

12 Q. I would. Thank you.

13 A. There is always a risk when you make
14 investment. Am I correct?

15 Q. That's a universal --

16 A. You want to make money, of course,
17 but there is no assurance of that. My life
18 experience told me that. I am a very lousy
19 investor, believe me.

20 MR. McHUGH: All right.

21 Q. Your hope was that it would be a
22 wise decision and that you would make some
23 money; is that correct?

24 A. That is American dream.

25 MR. KIMERLING: Let me have this

1 W. Tam

2 A. That's correct.

3 Q. And below that next to Yung Yam I
4 think it's Cheung, I can't read it, there is a
5 1 without a minus sign.

6 A. Yes.

7 Q. Does that indicate that Mr. Chan's
8 share, single share, was transferred to Yung
9 Yam?

10 A. That's correct.

11 Q. Under W. Tam, which I assume is you,
12 sir?

13 A. That's correct.

14 Q. There is a minus 5. That indicates

15 that you sold your shares?

16 A. That's correct.

17 Q. When did you sell your shares?

18 A. January 26th, 1996.

19 Q. The person that appears to have
20 obtained your shares is Melina Tam. Is she
21 related to you?

22 A. Yes.

23 Q. How is she related to you?

24 A. She is my wife.

25 Q. Did you sell your shares to her or

1 W. Tam

2 Tom, the relationship of them is not going
3 well. They thinking about divorce. That put
4 me in a very awkward position. That's why I
5 want to be out.

6 Q. And why did that place you in an
7 awkward position?

8 A. One is my cousin and one is, you
9 know --

10 Q. Not your cousin?

11 A. Yes. That is very awkward, you
12 know.

13 Q. Do you think it placed your wife in
14 an awkward position?

15 MR. McHUGH: Objection to the form
16 of the question. Calls for him to
17 speculate on the operation of someone
18 else's mind.

19 You can answer, if you wish.

20 A. What is the question again?

21 Q. Well, you said it put you in an
22 awkward position.

23 A. Yes.

24 Q. Why didn't it place your wife in the
25 same awkward position?

1 W. Tam

2 A. Because my wife is an inactive
3 investor. She never come to the restaurant.

4 Q. Did you or your wife ever obtain any
5 other shares in the restaurant after this
6 transfer in January of '96?

7 A. There was two shares increased from
8 5 to 7, yes.

9 Q. Was that through a transfer or
10 purchase by your wife?

11 A. Yes. You can see that on the column
12 next to me, Dung H. Leong, he want to be out,
13 so we were forced to buy all their shares.

14 Q. And so when was that?

15 A. I can't recall right now. I can't
16 give you accurate answer on that.

17 Q. Approximately, assuming that you
18 transferred your shares in January of '96, how
19 much later after that did Mr. Leong transfer
20 his shares?

21 MR. McHUGH: Objection to the form.

22 Assumes it was later.

23 You can answer if you know.

24 A. No, I can't recall. It's too long
25 ago.

1 W. Tam

2 Q. Your counsel makes an interesting
3 time observation. Was it before or after you
4 transferred your shares to your wife that
5 Mr. Leong transferred his shares?

6 A. Before.

7 Q. So your wife bought two shares at
8 some time before '96; is that correct?

9 A. I recall I bought the shares, the
10 two shares, and then the shares were all
11 transferred to my wife on January 26th, 1996.

12 Q. Do you recall how much you paid for
13 Mr. Leong's shares?

14 A. Same thing, 10,000 a share.

15 Q. I am going to ask you to look at the
16 names in the left-hand column of the
17 shareholders and indicate to me which of those
18 shareholders also were employed by the
19 restaurant.

20 A. Peter T. Lee.

21 Q. And what was his position at the
22 restaurant?

23 A. General manager. Right, Mr. Eng?

24 Q. You could ask him later, but he is
25 not allowed to talk to you right now.

1 W. Tam

2 Q. Was he --

3 A. He just sit there eating.

4 Q. Okay. Was he ever up as a host in
5 the front of the restaurant?

6 A. No.

7 Q. Did you ever see him serving tables?

8 A. He didn't know how to do those
9 things.

10 Q. You were his cousin. What was he
11 doing during the time that -- was he employed
12 anywhere else during the time that the
13 restaurant was open?

14 A. You mean since 1985?

15 Q. 1985, yes.

16 A. No. To my knowledge. Okay? To my
17 knowledge.

18 Q. The next name is your wife's name.
19 Was she an employee in the restaurant at any
20 time?

21 A. No.

22 Q. Is there any other person on that
23 list whose name we haven't discussed who was an
24 employee?

25 A. I think we covered everything, yes,

1 W. Tam

2 Mr. Tom the president of the corporation?

3 A. From the beginning to sometime in
4 the '90s.

5 Q. And after he was no longer
6 president, who was the president?

7 A. Mee Mee Tom.

8 Q. Did he hold any other officer
9 positions after his wife took over as
10 president?

11 A. You mean in Nice Restaurant?

12 Q. Yes.

13 A. No. As far as I know, no.

14 Q. Did there come a time when your wife
15 transferred her shares to the restaurant?

16 A. Excuse me? I didn't follow your
17 question.

18 Q. Did your wife ever sell or transfer
19 her shares, the seven shares that she owned in
20 the restaurant?

21 A. Yes.

22 Q. Do you remember when that was?

23 A. That was in 2005.

24 Q. Were they sold for compensation?

25 A. Yes.

1 W. Tam

2 Q. Did you attend these meetings?

3 A. Sometimes they invite me.

4 Q. Let's talk about that for a minute.

5 At some point in time you were the secretary of
6 the board; is that correct?

7 A. That's correct.

8 Q. And you resigned in '95, '96? When
9 did you resign the position as secretary of the
10 board?

11 A. July 1st, 1996.

12 Q. When you transferred your shares; is
13 that correct?

14 A. I transferred the shares on January
15 26th.

16 Q. So July 1st, 1996 you resigned?

17 A. That's correct.

18 Q. Why did you resign as secretary in
19 July of '96?

20 A. I don't feel comfortable with the
21 way Mee Mee Tom run the restaurant.

22 Q. What, in particular, made you
23 uncomfortable?

24 A. Because Mee Mee Tom and Ben Tom did
25 not get along, as I told you, put me in a very

1 W. Tam

2 awkward position.

3 Q. I understand their relationship to
4 each other was difficult, but you said you
5 didn't feel comfortable the way that she ran
6 the restaurant. What was it in the way that
7 she ran the restaurant that made you
8 uncomfortable?

9 A. Well, Ben Tom is my cousin. I trust
10 him. Mee Mee Tom is not my cousin. I am not
11 in the office. I am not in the restaurant.
12 Most of -- almost 99 percent of the time I am
13 not in the restaurant.

14 Q. Did you have reason not to trust
15 her? Is there something that she did that led
16 you not to trust her?

17 A. No. Just my intuitive feeling.
18 That's my feeling.

19 MR. KIMERLING: Why don't we just
20 take a short break.

21 (Recess was taken from 11:18 to
22 11:31.)

23 BY MR. KIMERLING:

24 Q. You testified -- this is just to
25 refresh both our recollections -- at some point

1 W. Tam

2 in '96 when Mrs. Tom became the president you
3 withdrew as the secretary of the board; is that
4 correct?

5 A. Yes.

6 Q. And you also indicated that you felt
7 comfortable with Mr. Tom's running the
8 restaurant, but not with Mee Mee Tom; is that
9 correct?

10 A. That's correct.

11 Q. And that in Mr. Tom's era as the
12 president he was the person who you saw as the
13 accountant or board member as running the
14 restaurant; is that correct?

15 A. No.

16 Q. Who ran the restaurant during the
17 period when Mr. Tom was president?

18 A. Peter Lee.

19 Q. And Peter Lee was the general
20 manager?

21 A. That's correct.

22 Q. Who hired Mr. Lee?

23 A. I don't know. He is the one -- he
24 was the one who planned the whole thing.

25 Q. Mr. Lee?

1 W. Tam

2 A. Yes.

3 Q. And after '96 did you attend any
4 board meetings of the restaurant?

5 A. I attend the meeting as the
6 accountant function, as the role of accountant.

7 Q. And how often did you attend
8 meetings after '96?

9 A. Once a year, the most. I can't give
10 you exact. Average maybe once a year.

11 Q. Were you in any other meetings at
12 the restaurant other than those once-a-year
13 meetings?

14 A. No.

15 Q. You indicated that you kept the
16 corporate book after you resigned as secretary;
17 is that correct?

18 A. As a matter of convenience, yes.

19 Q. Convenience?

20 A. Yes, as a matter of convenience for
21 the client.

22 MR. KIMERLING: Let me have this
23 marked as Plaintiffs' Exhibit 3 in the
24 William Tam deposition.

25 (Plaintiffs' Exhibit 3, letter dated

1 W. Tam

2 December 28, 1985, Bates stamped OT 201,
3 marked for identification.)

4 Q. I show you what's been marked as
5 Plaintiffs' Exhibit 3. Do you recognize that
6 document, Mr. Tam?

7 A. Pardon?

8 Q. Do you recognize this document?

9 A. Yes.

10 Q. This is your letter of engagement
11 with Nice Restaurant; is that correct?

12 A. That's correct.

13 Q. It's addressed to Mr. Tom as the
14 president; is that correct?

15 A. Yes.

16 Q. It's dated, I believe, December
17 28th, 1985?

18 A. That's correct.

19 Q. Were you providing accounting
20 services prior to this date?

21 A. Yes.

22 Q. Let me draw your attention to --
23 there is a line after the numbered sentences.
24 That sentence reads: "Our engagement cannot be
25 relied upon to disclose errors, irregularities

1 W. Tam

2 2005, that five-year period, how often were you
3 in the restaurant?

4 A. That's very difficult to tell. How
5 can I remember something -- it's not fair to
6 ask this question.

7 Q. I understand it's a difficult
8 question, but were you in the restaurant on the
9 average of once a month during this period?

10 A. I would say about twice a month.

11 Q. What was the reason that you would
12 come to the restaurant during this period from
13 2000 to 2005?

14 MR. McHUGH: Object to the form of
15 the question. You said "reason." There
16 may be different reasons for each visit.

17 MR. KIMERLING: That's correct.

18 A. Mostly I came over there to pick up
19 the mail that was reserved for me, tax mail,
20 you know.

21 Q. Did you pick up any records from the
22 restaurant during these visits?

23 A. Yes.

24 Q. What kinds of records did you pick
25 up?

1 W. Tam

2 A. The daily sales report.

3 Q. Anything else?

4 A. Bank statement.

5 Q. Anything else?

6 A. That's it.

7 Q. Did you pick up any payroll
8 information during these approximately
9 twice-a-month visits?

10 A. Yes.

11 Q. You picked up payroll information;
12 is that correct?

13 A. Yes.

14 Q. What specifically was the payroll
15 information that you picked up.

16 A. The Social Security number of the
17 new employee, when they start to work.

18 Q. Anything else?

19 A. Something like that. That's all.

20 Q. Did you pick up any information
21 about the hours of the employees' work at that
22 time?

23 A. No.

24 Q. Did you maintain the employee files
25 of the restaurant at any time between 2000 and

1 W. Tam

2 2005?

3 A. Can you be more specific on that.

4 Q. Let me ask it a different way. Did
5 the restaurant have any files that it
6 maintained for each employee, forms or anything
7 else?

8 A. There is a file for I-9. There is a
9 folder for W-4. That's all I know.

10 Q. Those were files that the restaurant
11 maintained?

12 A. That's correct.

13 Q. Did you maintain parallel files in
14 your office?

15 A. No.

16 Q. These approximately twice-a-month
17 visits that you made, how long a time were you
18 in the restaurant during these visits?

19 A. Very brief.

20 Q. Fifteen minutes?

21 A. You are right in the ballpark.

22 Q. In the period from 2000 to 2005 who,
23 if anyone, would you talk to in the restaurant
24 when you visited?

25 MR. MCHUGH: I am going to object to

1 W. Tam

2 that question as overly broad.

3 MR. KIMERLING: It is. I will
4 rephrase it. Thank you.

5 Q. Other than saying hello to a waiter,
6 is there some person or persons that you would
7 regularly talk to when you came to the
8 restaurant?

9 A. No.

10 Q. Who was the person that provided you
11 with the documents that you took back from the
12 restaurant? Was there somebody that kept those
13 for you?

14 A. Mee Mee Tom, I guess.

15 Q. So did you speak to Miss Tom,
16 Mrs. Tom, to get your daily sales receipts,
17 et cetera, that you took back with you to your
18 office?

19 A. The bookkeeper prepared the daily
20 sales report and was put in the folder.

21 Q. And who, if anyone, would provide
22 you with information about new employees?

23 A. Mee Mee Tom.

24 Q. You were on this retainer engagement
25 letter until the end of 2005; is that correct?

1 W. Tam

2 Q. Do you know where she was residing
3 in 2006?

4 A. I don't know. I never -- I don't
5 know.

6 Q. When you ended your services as an
7 accountant in the end of '05 or the beginning
8 of '06 at the completion of the taxes, did you
9 transfer any documents back to the restaurant?

10 A. Yes.

11 Q. Which ones were they?

12 A. All the payroll folder, all the
13 payroll journal, all the payroll reports, all
14 the payroll individual records of three years;

15 '05, '04, '03.

16 Q. And you provided them to whom at the
17 restaurant?

18 A. I put it in the box and give it to
19 Mee Mee Tom.

20 Q. Do you still maintain copies of
21 corporate tax returns in your office for this
22 restaurant?

23 A. No. I gave it to Mee Mee Tom.

24 Q. Besides the payroll information, you
25 also gave her back the corporate tax return?

1 W. Tam

2 A. I don't make up those checks. I
3 don't make copies of that. It's all in the
4 bank statement, the check, and, I'm sorry, I
5 really don't remember whether I still have the
6 bank statement or I returned back to Mee Mee
7 Tom. I apologize for that.

8 Q. No, listen, your attorney and you
9 can talk about it and if you have them, we may
10 obtain it at some point.

11 A. Absolutely.

12 Q. Did you have any authority to sign
13 checks for the corporation at any time?

14 A. The first three or four years.

15 Q. And after that you no longer had the
16 authority; is that correct?

17 A. That's correct.

18 Q. Who had the authority to sign checks
19 for the corporation?

20 A. Can you tell me the period?

21 Q. Sure. From the beginning, when the
22 restaurant first opened, who had the authority
23 to sign checks?

24 A. Ben Tom.

25 Q. Did he continue to have that

1 W. Tam

2 Q. And what is -- is it use?

3 A. Used tax. There is the sales tax,
4 there is the used tax. Sales and used tax.

5 Q. I apologize for my unfamiliarity.
6 What is used tax?

7 A. Used tax is you purchase something,
8 you have to pay the used tax.

9 Q. Okay. In other words, give me an
10 example. It may be helpful to understand.

11 A. I believe there is a bill from the
12 garbage collection, there is no sales tax paid
13 on that, no used tax paid on that, and they
14 find there and they charge on that.

15 Q. There wasn't a controversy about the
16 sales taxes of the restaurant?

17 A. No.

18 Q. During the period that Mr. Tom was
19 an employee in 2001, do you recall what his
20 position in the restaurant was?

21 A. I don't know.

22 Q. You indicated earlier that one of
23 your functions was the calculation of payroll
24 for the restaurant; is that correct?

25 A. To do the payroll, yes.

1 W. Tam

2 Q. What information did you use in
3 preparing the payroll?

4 A. Mee Mee Tom gave me who will be on
5 the payroll for that particular period, number
6 of hours, wages.

7 Q. How did she provide you that
8 information, was it orally or --

9 A. Orally.

10 Q. So she would indicate to you who
11 should be on the payroll for particular time
12 frames; is that correct?

13 A. We did it by exception. She told me
14 whoever is not in the payroll.

15 Q. I see.

16 A. It will be easier.

17 Q. And so there are points in time when
18 people were removed from the payroll; is that
19 correct?

20 A. I guess so, yes.

21 Q. She also told you the number of
22 hours that those that were on the payroll
23 worked; is that correct?

24 A. That's correct.

25 Q. Did she give that to you in writing

1 W. Tam

2 or orally?

3 A. Orally.

4 Q. Did you ever ask her for
5 documentation in regard to the hours of the
6 employees?

7 A. That's not my job.

8 Q. She told you their wages; is that
9 correct?

10 A. She told me the hours, she told me
11 the wage.

12 Q. And when you say "the wage," is that
13 their hourly wage or their biweekly --

14 A. Hourly rate.

15 Q. Did she orally provide that
16 information to you or was it in writing?

17 A. Orally.

18 Q. And did you do this in person or
19 over the phone with her?

20 A. On the phone.

21 MR. KIMERLING: Can I have this
22 marked as Plaintiffs' Exhibit 4.

23 (Plaintiffs' Exhibit 4 letter dated
24 April 30, 1996, Bates stamped OT 176
25 through OT 179, marked for identification.)

1 W. Tam

2 A. I did not.

3 Q. Did you ever tell anybody not to
4 install a time clock?

5 A. I did not.

6 Q. At any time that you were at the
7 restaurant did you ever see a sign-in book or
8 sign-in log of any kind that was maintained by
9 the restaurant?

10 A. In that fifteen minutes I did not
11 see it.

12 MR. KIMERLING: Mark this as
13 Exhibit 5, please, in the William Tam
14 deposition.

15 (Plaintiffs' Exhibit 5, copies of
16 checks, Bates stamped OT 325 through
17 OT 328, marked for identification.)

18 Q. Would you take a look at that
19 exhibit, sir.

20 A. Yes.

21 Q. These are copies of checks that your
22 attorneys have provided me.

23 A. Okay.

24 Q. Do you recognize these checks?

25 A. These are the checks signed by Mee

1 W. Tam

2 Mee Tom.

3 Q. And who prepared the check itself?

4 A. This is Mee Mee Tom's handwriting.

5 Q. Have you ever seen these checks
6 before you turned them over to your attorney?

7 A. I saw that when I prepared my
8 records.

9 Q. Were the employees at the restaurant
10 paid in cash --

11 A. Yes.

12 Q. -- for their work?

13 A. Yes.

14 Q. Were they paid in cash and check or
15 just cash?

16 A. 99 percent paid in cash.

17 Q. Some workers were paid in check?

18 A. Some they specifically requested to
19 be paid in check and we paid them in check, and
20 Mee Mee Tom paid in check.

21 Q. Looking at the first page of this
22 exhibit, 325 Bates stamp, you will see that
23 there are two checks made out to cash which say
24 for the August 15th payroll. Do you see that?

25 A. Yes.

1 W. Tam

2 in check and how much was in cash? Who would
3 divide it up?

4 A. If the employee requested to be paid
5 in check, let's say there is only one, let's
6 say the total payroll is 12,300, let's say the
7 employee check is 300, I would put down 300 and
8 12,000.

9 Q. Okay. And who prepared the checks
10 for the employees that requested it?

11 A. Mee Mee Tom.

12 Q. Did you ever obtain copies of those
13 checks when you obtained the bank statements
14 from the restaurant?

15 A. I saw that, yes.

16 Q. Do you know whether or not those
17 checks had a stub, pay stub that broke out the
18 withholding or the hourly wages or any other
19 information about the check?

20 A. Yes.

21 Q. And who prepared that?

22 A. I. As part of the payroll journal
23 they create a loose sheet of paper, you know.

24 Q. And you would prepare that and give
25 it to --

1 W. Tam

2 A. To Mee Mee Tom.

3 Q. Would she pass that out with the
4 cash as well?

5 A. I don't know.

6 Q. But you gave her a slip for each
7 employee?

8 A. Yes.

9 MR. KIMERLING: Let me have this
10 marked as Plaintiffs' Exhibit 6, please.

11 (Plaintiffs' Exhibit 6, Nice
12 Restaurant Inc. 4th QTR 2001 spread sheet,
13 Bates stamped OT 709, OT 710, OT 399 and
14 OT 400, marked for identification.)

15 Q. I show you what's been marked as
16 Plaintiffs' Exhibit 6. It is a combination of
17 pages from the production that your attorneys
18 have provided me. They are Bates stamped 709
19 and 710 and 399 and 400.

20 MR. KIMERLING: We will all agree
21 that although these documents have Social
22 Security numbers on them, that if they are
23 shown to anyone else, the information will
24 be redacted. Is that an agreement,
25 counsel?

1 W. Tam

2 Q. Okay. Do you know whose handwriting
3 that would be?

4 A. This is -- no, I don't know.

5 Q. Is there someone in your office that
6 assisted you in the handling of the account of
7 Nice Restaurant?

8 A. No. I do it myself.

9 Q. Let me ask you to look at
10 Plaintiffs' Exhibit 7 again, document 985, the
11 next page. Do you see that chart there?

12 A. Yes.

13 Q. Do you know who prepared that chart?

14 A. That I prepared.

15 Q. Could you tell me what the second
16 column of numbers refers to?

17 A. That represent the shares of the
18 tips based on what Mee Mee Tom told me.

19 Q. And the next column is what
20 information?

21 A. That is basically the percentage of,
22 let's say, 1 divided by 12.60 equal to 0.079.

23 Q. And the figure 5,000 --

24 A. Is the amount of the tips for that
25 period.

1 W. Tam

2 Q. Who provided you that number?

3 A. Mee Mee Tom.

4 Q. Did you ask her to provide you any
5 other documents to support --

6 A. No.

7 Q. -- that number?

8 A. No.

9 Q. Do you have reason to believe that
10 for the pay period from January 1st to the 15th
11 that only \$5,000 exactly was obtained in tips?

12 A. My role is just ADP. I take
13 whatever they gave me.

14 Q. You don't have an obligation as an
15 accountant to question the reliability or the
16 accuracy of that number?

17 MR. McHUGH: Objection to the form.

18 Calls for a conclusion of law.

19 You can answer, if you know.

20 A. I do not -- as I say in engagement
21 letter, I prepare everything according to what
22 they told me to do. That is spelled out in the
23 engagement letter.

24 Q. But you also indicated that you
25 wouldn't as an accountant prepare or file a

1 W. Tam

2 MR. KIMERLING: Let me just take a
3 second here for a second.

4 (Discussion off the record.)

5 BY MR. KIMERLING:

6 Q. You obtained information from the
7 restaurant for the tips that the waiters --
8 whoever were on these lists; is that correct?

9 A. Mee Mee Tom told me the amount of
10 tips for each period.

11 Q. And you then added that in to your
12 payroll records; is that correct?

13 A. That's correct.

14 Q. Did you make any determinations as

15 to whether or not the amount of tips
16 corresponded with gross sales information that
17 the restaurant provided you?

18 A. I did -- once a year I filed a form
19 to the IRS. It fall into the guideline of
20 about 8 to 9 percent.

21 Q. So for the purposes of that form you
22 would calculate it to ensure that it fell
23 within that 8 percent guideline; is that
24 correct?

25 A. The form require me to calculate it.

1 W. Tam

2 that?

3 A. Six times 91 equal to 546.

4 Q. And then there is a thing that says

5 "OT."

6 A. Yes.

7 Q. What does that refer to?

8 A. Refer to the overtime.

9 Q. Is that a number of hours or a
10 number --

11 A. Four hours.

12 Q. Excuse me?

13 A. Four hours.

14 Q. Four hours of overtime?

15 A. Yes.

16 Q. I see a number 12.

17 A. That is the dollar amount, \$12.

18 Q. Okay. And how did you calculate
19 that?

20 A. Based on the guideline provided by
21 the Federal Department of Labor.

22 Q. And that would have been \$3 an hour
23 for four hours; is that correct?

24 A. That is one and half hour -- one and
25 half pay. 3 times 4 is 12.

1 W. Tam

2 get a re-assessment.

3 MR. KIMERLING: I have a series of
4 questions which I think won't take long
5 based on what I know of your client's
6 opinion or belief.

7 Q. My question, Mr. Tam is what role,
8 if any, did you play in the hiring of any of
9 the managers of the restaurant?

10 A. No role at all.

11 Q. Were you at all consulted by any of
12 the personnel at the restaurant in regard to
13 the hiring of managers?

14 A. No.

15 Q. Did you have a role in the hiring of
16 any employees in the restaurant?

17 A. No.

18 Q. Do you have any role in anyone being
19 fired from the restaurant?

20 A. No.

21 Q. Did you ever discuss with anyone at
22 the restaurant the need to terminate
23 undocumented workers from the restaurant?

24 MR. MCHUGH: This is ever during the
25 twenty years?

1 W. Tam

2 terminate a worker named Li, L-I, Zhe, Z-H-E,
3 Fei, F-E-I? These are phonetical.

4 A. I don't recall. I don't even know
5 the name. I don't.

6 Q. You don't recall that worker?

7 A. I don't recall.

8 Q. Did you have any role in setting the
9 hourly wages of the employees in the
10 restaurant?

11 A. No.

12 Q. Did you have any discussions with
13 anybody in the restaurant about the hourly
14 wages that were being paid to the workers?

15 A. Say again.

16 Q. Did you have any discussion with
17 anyone in the restaurant about the hourly wages
18 that were being paid to the workers other than
19 when Miss Tom or someone else at the restaurant
20 told you about it?

21 A. No.

22 Q. You never said to them that's the
23 minimum wage or that's not the minimum wage?

24 A. No.

25 Q. Did you have any discussion with

C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

I, KRISTIN KOCH, a Notary Public within
and for the State of New York, do hereby
certify:

That WILLIAM TAM, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that such deposition
is a true record of the testimony given by
such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 7th day of March,
2008.



KRISTIN KOCH, RPR, RMR, CRR, CLR